

**DEPARTMENT OF DEFENSE
OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE
(INSTALLATIONS AND ENVIRONMENT)**

**PREPARED STATEMENT
OF**

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FOR THE OVERSIGHT HEARING BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
PROTECTION OF NATIVE AMERICAN SACRED PLACES**

**RUSSELL SENATE OFFICE BUILDING
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INTRODUCTION

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE ON INDIAN AFFAIRS: I am Philip W. Grone, Principal Assistant Deputy Under Secretary of Defense (Installations and Environment). I thank you for this opportunity to speak on the Department's programs regarding the protection of American Indian sacred sites. First, I would like to acknowledge the hard work that many tribal and non-tribal organizations have put into this issue over the years to ensure that American Indians may continue to have access to sacred sites for religious and ceremonial purposes. The Sacred Lands Protection Coalition, in particular, has worked hard over the last two years to bring these issues into focus for Federal land managing agencies, the Congress, and the general public. The Department of Defense (DoD) was pleased to participate in the recent Sacred Lands Forum by hosting a screening of the film, *In the Light of Reverence*, at the Pentagon. Being a part of this event heightened our awareness of the importance American Indians ascribe to sacred sites and I want to assure you that the Department of Defense will continue to work cooperatively with tribal organizations and this Committee to help protect these sites.

The central mission of the U.S. military forces is the defense of the United States – its people, its land, and its heritage. The importance of this mission was reinforced by the events that have taken place over the last year. America's cultural resources, including those that are significant to American Indians, are an integral part of our nation's heritage. It is essential that we conserve and defend the places, objects, and records associated with our national heritage, and the ideas they embody for future generations. Military installations contain sites and landscapes where American Indians once lived, worshiped, hunted, fished, farmed, constructed temple mounds, and buried their dead. The descendents of American Indians who used or created such places still value these places for their cultural and religious importance. Protecting these resources is a fundamental part of the Department of Defense's mission.

Today, we believe that DoD has a solid record of response to American Indian concerns and we are working cooperatively on several fronts to address tribal issues. DoD has over 25 million acres of land under its administrative control and many of these lands are located near American Indian communities or areas of high Native American traditional use. We know that our military operations and training activities, in some cases, continue to affect the ability of American Indians to access sacred sites, to hold traditional ceremonies, and to practice their religions. We are, however, ever cognizant of the importance of sacred sites to American Indians and we are working hard to accommodate their

interests in sacred sites with our military requirements.

DOD AMERICAN INDIAN AND ALASKA NATIVE POLICY

DoD adopted its current policy on American Indians and Alaska Natives in 1998 in order to bring more uniformity to the way in which we work with tribes on DoD activities that could potentially affect tribal lands and resources, including sacred sites. The policy was designed to underscore the obligations derived from current laws, regulations, and executive orders governing our relationship with tribal governments. Our policy is comprehensive and highly regarded by tribal governments as well as other Federal agencies. We developed the policy in close consultation with tribal governments. Through the work of both a tribal steering group and a DoD steering group, the policy development process took over 20 months with presentations and briefings throughout Indian Country, including correspondence on several occasions with all 560-plus Federally-recognized tribes. We held breakout sessions at tribal conferences, such as the National Congress of American Indians and the National Tribal Environmental Council, and we met with several tribes on an individual basis.

We regard our policy as the cornerstone for DoD/tribal relations and the policy has resulted in significant improvements in the way we interact with tribal governments. The policy reaffirms DoD's commitment to meet its Federal trust responsibility and other obligations to tribes and to consult with affected Federally-recognized tribes on a Government-to-Government basis. The policy includes four guiding principles for our interactions with tribes: Trust Responsibilities; Government-to-Government Relations; Consultation; and Natural and Cultural Resources Protection.

Trust Responsibility

The first guiding principle acknowledges our Federal "Trust Responsibilities" to tribes. Our trust responsibilities are based upon the special relationship that the United States Government maintains with Tribal Governments. Some of these responsibilities are specified in treaties. Others are more generally expressed and implemented in Federal laws such as the Native American Graves Protection and Repatriation Act, the National Historic Preservation Act, the National Environmental Policy Act, the Archaeological Resources Protection Act, and the American Indian Religious Freedom Act. Additional responsibilities may be found in executive pronouncements such as Executive Order 13007, "Indian Sacred Sites," and Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments."

Although the Military Departments do not hold lands in trust for tribes, like the Department of the Interior, our mission activities can affect adversely tribal lands and cultural resources or off-reservation treaty rights, such as those for hunting and fishing.

For example, various tribes in the Pacific Northwest have treaty rights to engage in certain off-reservation subsistence activities, including the right to fish at “usual and accustomed” (U&A) locations within their traditional fishing areas. In Puget Sound, the Suquamish Tribe’s adjudicated U&A treaty rights encompass several DoD contaminated sites. Because of tribal concern that these cleanups may adversely affect tribal fishing grounds and shellfish beds, and recognizing that the Suquamish Tribe possessed considerable expertise and traditional ecological knowledge regarding these resources, the Navy entered into a cooperative agreement with the Tribe. The agreement enables the Navy to benefit from the Tribe’s assistance in developing response actions that address the contamination problem without harming fin- and shellfish stocks.

Government-to-Government Relations

The second guiding principle, “Government-to-Governmental Relations,” involves working with Federally-recognized tribes on a Government-to-Government basis.

We have many examples of implementation of this principle not only through the activities of the Military Departments, but also through DoD’s efforts to enter into Cooperative Agreements with tribal governments to work in partnership to address environmental impacts on Indian lands.

For example, in 1996, DoD created the Native American Lands Environmental Mitigation Program (or NALEMP) to address environmental impacts on Indian land resulting from past DoD activities. Since its creation, DoD, in partnership with tribes, has received reports of over 300 sites on Indian lands. We are now investigating these sites to determine an appropriate response. Many of these sites have areas of cultural significance associated with them. At the direction of Congress to mitigate impacts on Indian lands, we have entered into over 16 cooperative agreements with tribal governments for this purpose. These cooperative agreements allow tribal governments to work in partnership with DoD to mitigate DoD impacts on their lands. Moreover, the cooperative agreements:

- Foster tribal/DoD partnerships in the mitigation of environmental and cultural resource affects of DoD activities;

- Assist tribes in building the capacity to manage and protect their environmental resources as a by-product of the mitigation activity;
- Resolve complex issues between DoD and tribes;
- Build a knowledge base among tribal environmental/resource planners; and
- Integrate new ideas and technology into environmental and cultural resource mitigation activities on Indian lands.

Consultation

The third guiding principle, “Consultation,” recognizes our obligation to meaningfully consult with tribal governments whenever tribal lands or tribal interests may be affected by DoD activities. A good illustration of our consultation activities involves the Suquamish Tribe of the Port Madison Indian Reservation, Washington. The Navy and the United States Army Corps of Engineers (USACE) are working closely with the tribe to address potential impacts to treaty-reserved tribal resources attributable to military activities in the region. Encompassing a significant portion of the Puget Sound, the Suquamish tribe’s adjudicated “usual and accustomed” fishing area includes several Naval installations and Formerly Used Defense Sites, including the Puget Sound Naval Shipyard, Bremerton, and the Naval Undersea Warfare Center, Keyport. The Navy, USACE, and other Federal agencies are working to remediate environmental damage at sites affecting tribes. More importantly, the cooperative and collaborative working relationship with the tribe is helping the Navy and USACE meet its trust responsibilities while helping to sustain access to important military installations. In keeping with DoD policy, the Navy and USACE consult with the tribe on vital environmental and cultural information, and provide an opportunity for the Suquamish tribe to play a substantial and meaningful role in regional remediation efforts. Working in consultation with the tribe has led to a more efficient and comprehensive review of remediation activities, helping to expedite cleanup while ensuring the tribes treaty resources are restored and protected.

Natural and Cultural Resources Protection

The fourth and final guiding principle, “Natural and Cultural Resources Protection,” was included in our policy as a statement of our intent to undertake actions and to manage lands mindful of the special significance tribes ascribe to certain natural and cultural resources and traditional cultural properties. We know that one of the most important issues of concern to tribes is the protection of traditional cultural properties. Many of our installation commanders have formed partnerships and

undertaken formal agreements with tribes as part of an overall plan to protect the cultural resources located on Military Department lands. These partnerships and agreements cover such issues as access to traditional ceremonial and sacred sites; gathering of traditional herbs and medicinal plants; and the protection of grave sites, funerary objects, and human remains. Installations that have significant numbers of sacred or traditional use sites also work with tribes that are connected to those sites on an on-going basis. A few examples follow:

- **Barry M. Goldwater Range, Arizona** -- At the Barry M. Goldwater Range, Arizona, an American Indian Liaison position was established as a result of the 1989 record of decision resulting from an environmental impact statement on supersonic flights in the Sells Military Operations Area. This was in response to concerns of the Tohono O'odham Nation that turnover of military personnel hindered their ability to resolve issues. The liaison serves as a single point of contact to respond to operational issues and concerns of the Nation. To date, the Air Force and the Marine Corps have surveyed about 3.5 percent of the 2.7 million acres, cataloguing over 1,000 archaeological sites. As more areas are surveyed, the installation is finding an increased need for site protection. It is important to note that most sites are imperiled due to natural erosion or vandalism, not from military training.

The Air Force also sponsored a project with various tribes to identify places that are culturally important to tribes in the area to include traditional cultural places and sacred sites. By identifying these sites, the Air Force and Marine Corps hope to afford more protection and provide access to the tribes for religious and spiritual ceremonies. Another project is the collection of oral histories from elders and having tribes write the cultural history from their perspective to better understand traditional uses of the area. All of these projects at the Goldwater Range will assist the Air Force and Marine Corps in developing an Integrated Cultural Resources Management Plan for the range. The Air Force and Marine Corps have consulted with 26 Native American tribes in Arizona, California, and New Mexico to seek their cooperation.

- **Fort Benning, Georgia** -- Cooperation among the State Historic Preservation Officers of Georgia and Alabama, 11 Federally-recognized American Indian Tribes, and the public ensures proper treatment of traditional cultural properties, historic burials, and sacred sites on Fort Benning. Fort Benning consults with the following Federally-recognized tribes: Alabama Quassarte Tribal Town, Alabama Coushatta Tribal Town of Texas, Coushatta Tribe of

Louisiana, Kialegee Tribal Town, Chickasaw Nation, Muscogee (Creek) Nation, Miccosukee Tribe of Florida, Seminole Nation of Oklahoma, Seminole Tribe of Florida, Poarch Band of Creek Indians, Thlopthlocco Tribe of Oklahoma.

In consultation with 11 American Indian Tribes, Fort Benning has established a federally designated re-interment facility for Native American repatriation burials and for other historic Indian human remains requiring removal from their original locations, either on Fort Benning or elsewhere in the region. The consulting Tribes initiated the concept for a re-interment facility during discussions with the Muscogee (Creek) Nation and ultimately selected the one-acre site from six sites presented for consideration by Fort Benning. Fort Benning requested and received an exception to policy from the Department of the Army (DA) to establish the re-interment facility on the post. The facility will be used, in consultation with the Tribes, for the reburial of Native American remains under the Native American Graves Protection and Repatriation Act (NAGPRA), and for associated funerary objects.

Fort Benning formed close government-to-government relationships with consulting Tribes. Semiannual meetings cover issues of mutual importance to the Tribes and the installation. The Garrison Commander is the Installation Commander's personal representative and chairperson for the meetings. Fort Benning's Cultural Resource Manager routinely interacts with Tribal representatives on issues affecting American Indian cultural properties.

- **Fort Carson and Pinon Canyon, Colorado** -- Prehistoric Native American sites include campsites and resource processing areas (hunting and gathering, lithic extraction and processing activities), rockshelters, large multi-room vertical stone slab villages, single room habitation sites, stone circle (teepee ring) sites, quarry (lithic) sites, game-drive sites, rock art (petroglyphs and pictographs), and vision quest sites. Fort Carson began consultation with Native American tribes in 1983 when it instituted an ethnographic survey of tribes concerned with traditional uses of natural resources and with sacred sites at the Pinon Canyon Maneuver Site. Fort Carson actively consults with tribes on a government-to-government basis and allows access to the installation for ceremonies and the collection of plants.
- **Fort Lewis and Yakima Training Center, Washington** -- Native Americans hunt and collect plants on the installations and have access to other resources within the Yakima Training Center. The resources include, but are not limited to, the land and water, fish and wildlife,

cultural and archaeological resources. The Army respects the access rights of the Yakima Indian Nation under the Treaty of 1855. At the same time, the Army and the Yakima Indian Nation recognize the need to establish reasonable entry procedures to prevent injury, loss of life or undue interference with ongoing military operations. To ensure that safety hazards are minimized, and that no conflicting military exercises are taking place, the Yakima Indian Nation have established protocols at their headquarters for coordination of access by Yakima tribal members.

- **Fort Sill, Oklahoma** -- Native American servicemen conduct an annual sweatlodge ceremony at Medicine Bluffs, a prominent landform long held sacred by Plains Indian tribes. The Medicine Bluffs are recognized not only as a sacred site, but they are also listed on the National Register of Historic Places. The installation has undertaken a number of initiatives, with no negative effects on training, to avoid this area during training and in order to protect the site.
- **Marine Corps Base Camp Pendleton, California** -- Marine Corps Base Camp Pendleton, consults on a government-to-government basis with representatives of six Luiseño and thirteen Kumeyaay Federally-recognized tribal governments. The base also consults with three Juaneño and one Luiseño non-Federally-recognized tribal governments. The tribes are routinely consulted on issues pertaining to cultural resources and undertakings that have the potential to affect cultural resources. Only one of the three Juaneño tribal governments has requested permission to have access to a sacred site.
- **Marine Corps Base Hawaii** -- Evidence of Hawaiian occupation of Mokapu peninsula consists of temporary coastal campsites, remnant stone temples, and shrines. Native Hawaiian descendants of Mokapu's original inhabitants claim cultural and religious attachment to these sites. Dating to the late 1980s and continuing to the present, the Marine Corps Base Hawaii has received requests for access to visit the area. The requests have been made by two distinct groups: a native Hawaiian organization known as the Temple of Lono and a native Hawaiian family group known as the Paoa/Kea/Lono 'Ohana. The purpose of the requests is to renew, worship, and practice traditional beliefs, and for conducting spiritual gatherings to end the season of Makahiki, an annual festival. The requests have always been accommodated and the visits have lasted from a few hours to an overnight stay.
- **Naval Air Station Fallon, Nevada** -- The Naval Air Station in Fallon, has an agreement with

the Fallon Paiute-Shoshone Tribe, the Nevada State Historic Preservation Officer, the U. S. Fish & Wildlife Service, and the Nevada State Museum. This historic MOU commits state and federal agencies to a consultation and consent policy about cultural/archaeological resources. The MOU governs excavation and removal of Native American remains, sacred and funerary objects, and “cultural patrimony” of the Fallon Tribes.

- **Nellis Air Force Base, Nevada** -- Nellis Air Force Base began a long-term program of cultural preservation with nearby tribes in January 1996. Several Shoshone, Paiute, and other tribes have traditional and court-validated ties to the lands that Nellis occupies. Thousands of archaeological sites, including caves with petroglyphs and rock art are located on these lands. With the cooperation of tribes, the Air Force is involved with an extensive sacred or traditional site inventory and consults with tribes on the results of its efforts. The tribes are active partners in the installation’s cultural resources management program.
- **Robbins Air Force Base, Georgia** -- Robins Air Force Base has developed an effective community partnership with the Muskogee (Creek) Nation. This partnership promotes projects that educate the general population about the Nation’s culture and history. One such project, an exhibit at the Base Museum of Aviation, recreated the story of the original people that inhabited the lands where the base is located.
- **Vandenberg Air Force Base, California** -- At Vandenberg AFB, there is a long-standing partnership between the base and the Chumash Indians. Members of the tribe participate in planning, review, and implementation of projects that have the potential to affect adversely traditional and contemporary cultural resources. Ground-disturbing activities have often been re-sited to maintain the integrity of areas with special significance. If an activity cannot be re-sited, members of the Chumash serve as monitors during all phases of excavation and construction. This relationship, begun in 1984, has expanded into a very positive partnership that exists today.

SACRED SITES PROTECTION TOOLS

As a tool, the integrated cultural resources management plan or ICRMP, I mentioned earlier, relative to the Goldwater Range, is not unique to that range. Although not required by law, ICRMPs are required by DoD policy for all DoD installations. ICRMPs provide a valuable tool for devising a

sound cultural resources management strategy. The purpose of ICRMPs is to help ensure compatibility between the installation military mission, or other planned activities, and the management of its cultural resources. An ICRMP spells out approaches to the fundamental requirements of cultural resource management: identification and evaluation of cultural resources; consultation with concerned parties; consideration of impacts; and, decisions about how to treat resources. Typical ICRMP requirements include surveys, studies, consultation with affected parties, including Native Americans, and documentation of the decision on how to address project effects on the cultural resources. The development of ICRMPs is vital to our ability to get out front in management of culturally significant sites, rather than operate in a reactionary mode which can lead to mission related delays that can be costly and counterproductive.

In recognition of the importance of ICRMPs in installation planning, the Department has provided to installation commanders, a recently completed publication, Commander's Guide to Stewardship of Cultural Resources. This guide, developed through the DoD Legacy Resource Management Program, provides reference to all applicable federal law, Executive Orders and DoD Instructions pertaining to cultural resources. The guide identifies ICRMPs as an effective tool in identifying and managing cultural resources within the constraints of the military mission. The guide stresses the positive benefits for implementing an ICRMP: Streamlined planning, sound economics and pride in heritage. The guide also lists Command responsibilities and provides examples of successful stewardship.

An example of successful ICRMP implementation, The Louisiana Army/Air National Guard (LAARNG) worked in cooperation with eight tribes, most located within the state itself and several located outside, to solicit comments regarding LAARNG's Integrated Cultural Resource Management Plan (ICRMP). In this case, the installation utilized a facilitator to assist in establishing formal consultation with tribes. This was accomplished by the installation entering into a Memorandum of Understanding (MOU) with each of the eight tribes. The MOUs represented a symbolic, trust-building gesture and entailed how consultation would be carried out. Subsequent meetings have become an annual event where the signatory tribes meet with the installation to explore new issues or reevaluate the ICRMP. The LAARNG has developed a successful program, working in consultation with tribes, to identify important cultural resources, traditional cultural properties and sacred sites.

If an installation has yet to complete an ICRMP, it must consult with relevant regulatory agencies each time it plans an action that may affect cultural resources. Such action include training

exercises; maintenance of buildings and grounds; alteration of buildings; construction; landscaping; base closure; records disposal; disposal of personal property; curation of artifacts; and, a host of others.

Another tool we believe will be valuable in our ability to address resources of special significance to tribes is a recently completed Legacy Treaty Research Project which identified treaties with explicitly reserved land-based rights associated with current DoD installations. With funding from the FY 99 Legacy Resource Management Program, the National Association of Tribal Preservation Officers, working through a cooperative agreement with the Army Environmental Center, identified 22 of 488 treaties which contained rights clearly affecting 58 DoD installations. The report provides installations with a tool for assessing their trust responsibilities to tribes and will be valuable during the tribal consultation process. The report also provides a brief history of treaty-making and the U.S. military interactions with tribes.

TRAINING

In order to ensure that our American Indian and Alaska policy is successfully implemented, the Office of the Deputy Under Secretary of Defense (Installations and Environment) has sponsored a series of DoD-wide training courses to assist our military and civilian personnel in understanding the unique relationship that exists between the Federal government and tribal governments. This is important to our sacred sites program because our ultimate success in working with tribes is tied to our understanding of the issues. Since 1999, we have sponsored seven courses and trained over 500 DoD staff on American Indian law, history, consultation, cultural communications, and cultural resource issues. We are targeting our initial training at our installations that are located in regions with significant tribal presence. The courses are designed to incorporate participation by local tribal historians, cultural resource specialists and tribal elders. Following the training, participants are requested to evaluate the quality and worth of the course. Military and civilian personnel report that they believe that the training is greatly beneficial in helping them relate to tribes around their installation and will help them do a better job relating to tribes. The Military Departments are also conducting training of their own. The Naval School, Civil Engineering Corps Officers, has been providing Native American training for the last four years with the assistance of my office. The National Guard has also been significantly involved in training its personnel.

CONCLUSION

Decades ago, the Air Force obtained a huge tract of land within the Oglala Lakota Pine Ridge Reservation, South Dakota, for preparedness training. The Badlands Bombing Range, used as a practice range for more than 30 years, has left potential unexploded ordinance, scattered old ammunition debris, and related problems. These lands are now being cleaned up and returned to the tribe. DoD is working with the tribe through the Formerly Used Defense Sites Program and through a NALEMP cooperative agreement to address issues associated with the former Badlands Bombing Range. This project is a living example of the way we are partnering with tribes to address their issues.

The tribe will once again have access to Sacred Sites and other culturally significant places located on these lands. As the project and partnership grow, DoD participants are gaining a better understanding of the unique government-to-government relationship that exists between the U.S. Government and tribal governments. Within this same spirit of cooperation, we can and will continue to work with tribes to address the protection of Sacred Sites on lands affected by DoD.

That concludes my statement. I would be pleased to answer any questions you might have.